

**ORDINANCE NO. F-1093**

**AN ORDINANCE AMENDING THE WHEATON ZONING MAP  
ON A CERTAIN PIECE OF PROPERTY COMMONLY KNOWN AS  
1619 N. PRESIDENT STREET – KLYACHENKO**

WHEREAS, a written petition has been made to amend the Zoning Map, which is attached to and forms a part of the Zoning Ordinance of Wheaton, Illinois to rezone and reclassify certain property legally described herein within the city limits of Wheaton, Illinois ("City"), and located at 1619 N. President Street, Wheaton, Illinois; and

WHEREAS, the zoning application is being requested pursuant to the terms and conditions of a certain annexation agreement dated October 17, 2005, ("Annexation Agreement"), among the City and Peter Klyachenko ("Owner"); and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton City Council, sitting as a special hearing body on October 10, 2005 to consider the requested zoning amendment.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Zoning map, which is attached to and forms a part of the Wheaton Zoning Ordinance, is amended by adding, including and classifying the following described property in the R-3 Single Family Residential Zoning District classification and in conformance with the Annexation Agreement:

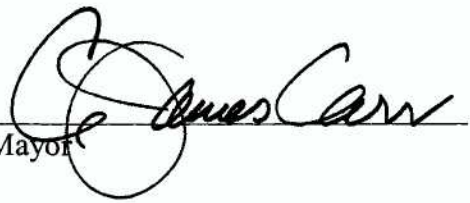
LOT 12 IN BLOCK 6 IN ARTHUR T. MCINTOSH AND COMPANY'S WHEATON FARMS, A SUBDIVISION IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.  
P.I.N. 05-10-106-007

The subject property is commonly known as 1619 N. President Street, Wheaton, IL 60187.

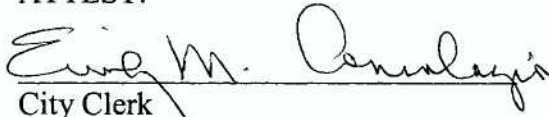
Section 2: The City Clerk is authorized and directed to record with the Office of the Recorder of Deeds, DuPage County, Illinois, and to file with the Office of the County Clerk, DuPage County, Illinois, a certified copy of this ordinance together with the accurate map of the subject property appended to this ordinance.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
Mayor

ATTEST:

  
City Clerk

Ayes:

Roll Call Vote  
Councilman Suess  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine  
Councilman Mouhelis

Nays:

None

Absent:

Councilman Bolds

Motion Carried Unanimously

Passed: October 17, 2005  
Published: October 18, 2005

## **ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT, made and entered into this 17th day of October, 2005 among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Airhart Construction ("Owner") ("Developer") and Milhail and Irina Mukhin ("Owner").

### **WITNESSETH**

WHEREAS, the Owner has an interest in or controls the real estate comprised of several parcels of property totaling approximately 2.5 acres, a description of which is set forth on the Plat of Annexation, marked as Exhibit " A", which is attached to and made a part of this Agreement (said real estate will hereafter be referred to in its entirety as "Subject Property").

WHEREAS, the Subject Property is contiguous to the corporate limits of the City; and

WHEREAS, it is the desire of the Owner that all of said real estate be annexed to the City under the terms and conditions of this Agreement; and

WHEREAS, the Owner desires to construct a 13 unit attached townhome development and one single family home on the Subject Property substantially in accordance with and pursuant to the preliminary engineering and site plan dated July 22, 2005 prepared by Jacob Hefner Associates and the master landscape plan dated August 15, 2005 prepared by Jeffrey C. Kegerris hereinafter referred to as "Site Plans", a copy of which are marked as Exhibit "B" and are attached to and made a part of this Agreement; and

WHEREAS, the City has concluded that annexation of the Subject Property under the terms and conditions of this Agreement would further the growth of the City, enable the City to control the development of the area, increase the taxable value of the property within the City, extend the corporate limits and jurisdiction of the City, permit the sound planning and development of the City, and otherwise enhance and promote the health, safety, and general welfare of the City; and

WHEREAS, pursuant to the provisions of Section 6.1, et.seq., of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution, a proposed annexation agreement in substance and form of the same as this Agreement was submitted to the Wheaton City Council, and a public hearing was held thereon pursuant to notice as provided by ordinance and statute; and

WHEREAS, the City has had such hearings and heard such testimony as prescribed by law with respect to the requested zoning classification of R-5 Residential District with issuance of a special use permit for a planned unit development and R-2 Single Family Residential; and

WHEREAS, notice has been duly served in the manner provided by statute on the appropriate governmental entities and an affidavit that service of said notice has been duly served has been placed on record with the Recorder of Deeds, DuPage County, Illinois.

NOW, THEREFORE, in consideration of the foregoing preambles and mutual covenants and agreements contained herein, the parties hereto agree as follows:

**1. LEGAL CONFORMANCE WITH LAW.** This Agreement is made pursuant to and in accordance with the provisions of the Wheaton City Code and applicable provisions of the Illinois Compiled Statutes and Illinois Constitution.

**2. PETITION TO ANNEX.** The Owner has filed with the Clerk of the City, a petition pursuant to the provisions of Section 7-1-8 of the Illinois Compiled Statutes [65 ILCS 5/7-1-8 (1998 State Bar Association Edition)], conditioned upon the signing of this Agreement, to annex the Subject Property to the City. The petition is attached as Exhibit "C". This Agreement in its entirety, together with the aforesaid petition for annexation, shall be null, void, and of no force and effect unless the Subject Property is validly zoned and classified under the City's Zoning Ordinance as hereinafter set forth and amended.

**3. ANNEXATION ORDINANCE.** Immediately upon the execution of this Agreement, the City Council will enact an ordinance annexing the Subject Property to the City.

**4. REZONING.** Immediately after the passage of the ordinance annexing the Subject Property, the City shall, without further hearing, adopt an amendment to its Zoning Map which is part of the Zoning Ordinance of the City and the Comprehensive Plan of the City, zoning and classifying the Subject Property in the R-5 Residential District with issuance of a special use permit for a planned unit development and R-2 Single Family Residential. That portion of the Subject Property to be zoned R-5 Residential District is legally described in Exhibit "A-1" attached hereto and made a part hereof ("R-5 Parcel") and that portion of the Subject Property to be zoned R-2 Single Family Residential District is legally described in Exhibit "A-2" attached hereto and made a part hereof ("R-2 Parcel").

**5. DEVELOPMENT STANDARDS.** The Site Plans has been reviewed by the corporate authorities of the City, and is hereby approved as the Preliminary Plat for the subdivision of the Subject Property. The City agrees to approve the final plat of subdivision provided said final plat, final engineering and such other final plans, as are required by the City's ordinances, are duly submitted and comply with the City's ordinance, this Agreement, and are consistent with the Site Plans. The Subject Property shall contain a maximum of 13 attached dwelling units and two detached single family homes. The Subject Property shall be developed in the manner and in accordance with the proposed uses as shown on the Site Plans. The Development shall be in full conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Code, and other ordinances, codes, rules, and regulations of the City pertaining to the development of the Subject Property to be annexed, as amended by the Site Plans and/or this Agreement.

The Owner shall provide to the City such documents and cross access easements which would allow the private roadway to be interconnected with Tartan Court and MacKenzie Place Phase 1. Such documents and easements shall be subject to the reasonable approval of the City Attorney. Each Deed shall be subject to the Declaration of Covenants, Conditions and Restrictions, which said Declaration will provide for the roadway connection.

**6. PLANNED UNIT DEVELOPMENT.** In furtherance of the review and approval by the City of the Subject Property, Developer has submitted representative drawings of the proposed exterior elevations of the attached single family dwelling units dated June 6, 2004 prepared by Airhart Construction ("Exterior Elevation Plan"), copies of which are attached hereto as Exhibit "D". The Subject Property shall be developed in substantial conformity with the Site Plans and Exterior Elevation Plan.

**7. SANITARY SEWER FACILITIES.** The City agrees to cooperate in obtaining such permits as may be required from time to time by both Federal and State law, including (without limitation) the Illinois Environmental Protection Act, permitting the connection onto the sanitary lines of the Wheaton Sanitary District in order to develop and use the Subject Property. In addition, the City will accept dedication of all sanitary sewer mains located within the Corporate limits of the City and constructed by Developer in accordance with the final plat on the Subject Property, pursuant to Chapter 62 of the Wheaton City Code, as modified by Paragraph 11 of this Agreement. Location and size of sanitary sewer mains to be installed by Developer shall be in conformity with Exhibit "B", subject to final engineering considerations.

**8. STORM WATER FACILITIES.** Developer agrees to design and construct suitable storm water facilities for the Development which comply with the requirements and standards contained in Chapter 34 of the Wheaton City Code, the DuPage County Countywide Stormwater and Floodplain Ordinance, and all other applicable statutes and ordinances.

**9. WATER FACILITIES.** The City will accept dedication of all primary water mains constructed by Developer in accordance with the final plat of subdivision and final engineering for the Subject Property pursuant to Chapter 62 of the Wheaton City Code, as modified by Paragraph 11 in this Agreement. Location and size of the water lines to be installed by the Developer shall be in conformance with the Site Plans, subject to final engineering considerations as approved by the Director of Engineering.

**10. IRREVOCABLE LETTER OF CREDIT.** In lieu of construction bond or development bond or bonds, the City will accept an irrevocable letter of credit from a reputable banking institution to guarantee construction and quality of all public and storm water management facilities to be constructed in the Development. Said letter of credit shall be in the amount of one hundred twenty-five percent (125%) of the Developer's engineer's estimate of construction costs (as approved by the City Engineer) or one hundred percent (100%) of the contract costs of construction of all of the public facilities. Said letter of credit shall be in a format approved by the City Attorney and shall be payable to the City of Wheaton.

The letter of credit shall be issued and presented to the City on or before the date that the City executes a Subdivision Improvement Agreement in the form as provided by the City. As the Developer completes the items within the letter of credit, the Developer may apply to the City for acceptance of said improvements in accordance with Paragraph 11 of this Agreement. Developer agrees to cause the letter of credit to be extended to cover the actual time of construction.

**11. PROCEDURE FOR ACCEPTANCE OF ANY PUBLIC IMPROVEMENTS.** The procedure for acceptance by the City of any public improvement constructed as part of the development of the Subject Property shall be as provided in the Subdivision Improvement Agreement to be hereafter entered into between the City and Developer.

**12. MINOR CHANGES IN DEVELOPMENT.** Minor variations or deviations from the Site Plans may be necessary in order to solve engineering layout and design problems and other problems not reasonably foreseen at this time, including street and lot changes, as long as the same density is maintained and the lots conform to the subdivision and zoning ordinances of the City. The City shall enact such resolutions and ordinances as may be necessary to accommodate such changes in order to comply with the spirit and intent of this Agreement.

**13. PRESIDENT STREET IMPROVEMENTS.** The Developer agrees to pay the City a recapture payment of twelve thousand one hundred one and 10/100 dollars (\$12,101.10) plus percent (8%) per annum from May 1, 1991 to the date of payment for the Developer's prorata share of the cost of the President Street improvements heretofore constructed by the City ("President Street Recapture"). The President Street Recapture shall be paid to the City prior to recordation of the final plat of subdivision for the Subject Property.

**14. BUILDING PLANS.** The Developer shall be required to submit plans for each building to be constructed in the development. A building permit must be obtained and the appropriate permit fee paid as required by the Wheaton ordinances for each building to be constructed in the development.

**15. STOP ORDERS.** The City reserves the right to terminate and stop all activities at the job site, with written notice, to correct a situation which presents a direct hazard to the public health, safety, and welfare. Any such stop work order shall be issued in accordance with the provisions of the Wheaton city Code and adopted Building Codes.

**16. CONSTRUCTION OF PUBLIC IMPROVEMENTS.** The Owner agrees to construct sidewalks and install parkway trees within the adjacent parkways of President Street and Stoddard Avenue fronting the Subject Property in accordance with the standards contained in Chapter 62 of the Wheaton City Code. The Developer further agrees to re-construct

the street pavement following completion of all public underground utility work within the rights-of-way of Stoddard Avenue adjacent to the Subject Property. The design of the re-constructed street pavement shall conform to the design standards of the City as approved by the Director of Engineering, and shall not include curb and gutter, storm sewer, or additional pavement width than that which exists prior to development of the Subject Property.

**17. ANNEXATION AND PERMIT FEES.** The amount of the permit, license, tap-on or connection fees imposed by the City which are applicable to or required to be paid by the Owner or successor Owners, contractors, subcontractors, material men, or others performing work or supplying materials in connection with the development or construction of improvements on the Subject Property shall be the amount or rate of said fees in effect at the time of application for same.

**18. SCHOOL AND PARK CASH CONTRIBUTIONS.** The Owner agrees to provide an aggregate school and park cash contribution in the amount of \$2,519 for each new three bedroom townhome dwelling unit and \$5,700 for each new four bedroom single family detached dwelling unit, representing the cash contribution amount in effect at the time the petition for annexation was signed by the Owner. Said cash contribution shall be paid prior to the recordation of the final plat of subdivision. Adjustments to the amount to be paid will be made according to the actual number of bedrooms in each home and credit shall be given to the four single family homes that previously existed on the Subject Property. Said adjustment will be made according to the formula contained in Article 6 of the Wheaton City Code.

**19. WHEATON PARK DISTRICT ANNEXATION.** Owner agrees to annex, pursuant to Statute, the Subject Property to the Wheaton Park District within one (1) year from the date of this agreement.

**20. TREE PRESERVATION.** The Owner shall comply with the Tree Preservation requirements as set forth in Section 6.11 of the Wheaton Zoning Ordinance, subject to the provisions of the Site Plans and the terms of this Agreement.

**21. CONFLICT IN REGULATIONS.** The provisions of this Annexation Agreement shall supersede the provisions of any ordinances, codes, or regulations of the City which may be in conflict with the provisions of this Annexation Agreement.

**22. AMENDMENT OF ANNEXATION AGREEMENT.** This Annexation Agreement, and any exhibit attached hereto, may be amended pursuant to the provisions of Chapter 6 of the City Code.

**23. TIME OF THE ESSENCE.** Time is of the essence of this Agreement.

**24. INVALIDITY.** If any provision of this Annexation Agreement, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Annexation Agreement and the application of such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

**25. CONSEQUENCE OF NON-DEVELOPMENT.** Any portion of R-5 zoned property which has not been completely developed in full compliance with this annexation Agreement as of the termination date of this Agreement shall automatically revert to the R-1 zoning classification without the necessity of a public hearing or City action; and in such event any special use permit or other permission to develop the property granted herein shall automatically terminate.

**26. PROPERTY OWNERS' ASSOCIATION – MAINTENANCE.** For the funding and implementation of the care and maintenance of common facilities within the subject Property, including without limitation, any stormwater detention facility, common areas, and

landscaping walls, Developer shall establish a homeowner's association obligating the owners of all of the lots within the Subject Property to participate in the care and maintenance of such common facilities. The declaration of covenants providing for such a homeowner's association shall further provide for the right and authority, but not the obligation, of the City to enforce proper maintenance and care of such common facilities, and the right of the City to carry out such maintenance and care and collect the cost thereof from those lot owners responsible for the same, including the right of lien against the real property owned by such owner within the Subject Property. Such maintenance responsibilities and rights of the City shall not be amendable under the declaration of covenants without the City's prior written consent. The Owner shall enter into a Fire Lane Designation and Enforcement Agreement with the City in substantial conformance with Exhibit "E".

**27. AMENDMENTS TO ORDINANCES.** Except as expressly hereinafter provided, the Subject Property shall be developed and used in conformance with the City's Zoning Ordinance, Subdivision Control Ordinance, Building Codes, and other Ordinances, Codes, Rules and Regulations of the City pertaining to the development of the Subject Property. The Ordinances, Codes, Rules and Regulations existing on the date of application for building/site development permits shall be applicable, except as this same may be specifically amended pursuant to the terms of this Agreement. The foregoing provisions to the contrary notwithstanding, with respect to the development and use of the Subject Property, the provisions of the Wheaton City Code pertaining to the following items which are in affect on the date of this Agreement, except as to any such item which is otherwise amended or varied pursuant to the terms of this Agreement, shall remain applicable to the Subject Property for a period of five (5) years following the date hereof without regard to their subsequent amendment, modification or repeal, unless otherwise consented to in writing by Developer.

- (a) Minimum size of yards and setbacks;
- (b) Maximum building height;
- (c) Maximum lot coverage;
- (d) Minimum lot width;
- (e) Maximum floor area ratio;
- (f) Minimum lot size;
- (g) Minimum usable open space
- (h) Minimum lot depth;
- (i) Minimum storm water retention/detention requirements;
- (j) Curb, gutter and street construction and pavement standards for private streets and cul-de-sacs.

In any event, the City agrees that the Subject Property shall be allowed to be developed with two (2) detached single family and thirteen (13) attached townhome residential dwelling units, the provisions of any City ordinance in affect at the time of application for a site development/ building permit to the contrary notwithstanding.

**28. TERM OF AGREEMENT.** This Annexation Agreement shall be binding upon the parties hereto, their respective successors and the assigns for a full term of ten (10) years from the date of this Agreement.

**29. INDEMNIFICATION.** Owner shall indemnify and hold the City harmless from all injuries to persons and property which arise due to the negligence of the Owner, its agents, assigns, employees, contractors, and subcontractors. Owner shall indemnify and hold the City harmless from all causes of action, suits, judgments, settlements, legal fees, and all other costs which may be incurred by the City as a result of the aforesaid negligence. The Owner shall provide the City with certificates of insurance as required by any Subdivision Improvement Agreement hereafter entered between the City and the Owner.

**30. BINDING EFFECT.** This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, assigns, successors, and grantees.

**31. NOTICES.** Notices or other writings which any party is required to, or may wish to, serve upon any other party in connection with this Agreement shall be in writing and shall be

delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

- A. **Airhart Construction**  
500 E. Roosevelt Road  
West Chicago, IL 60185
- B. **Mikhail and Irina Mukhin**  
2022 Stoddard Avenue  
Wheaton, IL 60187
- C. **City of Wheaton.**  
City Clerk  
City of Wheaton  
303 West Wesley Street  
Wheaton, IL 60189-0727

**32. RECORDING.** This Agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois at the expense of the Owner.

IN WITNESS WHEREOF, the Corporate authorities and Owner have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here, all on the day and year first above written.

ATTEST:

Emily M. Amalagiri  
CITY CLERK

By

  
MAYOR

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
OWNER

ATTEST:

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